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May 19, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:


Re: *CC Docket No. 95-20, Computer III Further Remand Proceedings:
Bell Operating Company Provision of Enhanced Services*

On behalf of *Pacific Bell and Nevada Bell*, please find enclosed an original and six copies of its "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,


(s)

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Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 19 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Computer III Further Remand Proceedings:)
Bell Operating Company Provision of)
Enhanced Services)
_____)

CC Docket No. 95-20

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REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

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Exhibit A

SUMMARY

Opponents of BOC structural relief desperately attempt to establish the existence of BOC discrimination by trotting out every example of BOC activities or problems that they can possibly, and improperly, allege shows some impropriety. This attempt adds up to nothing but a list of irrelevant or immaterial events, which simply establish that the telecommunications industry is extremely complex and that problems, mistakes, and disagreements occur. It would be hard to imagine a weaker case than this one developed by opponents of structural relief against the BOCs. Its weakness supports the conclusion that the non-structural safeguards are working well to protect competition and consumers.

Only one party, the Commercial Internet exchange Association ("CIX"), takes the position that the Commission should retain service-specific relief via CEI plans. CIX fails to recognize the lack of benefits from the service-specific CEI plan approach, since ONA provides the same protections as CEI, and more.

The Newspaper Association of America ("NAA") asserts that the Commission should make service-specific determinations concerning which enhanced services would provide efficiency benefits from integration. NAA's position is based on its incorrect assertion that integration of some types of enhanced services, including electronic publishing services, does not produce efficiency benefits. When one company provides more than one telecommunications service, there can be duplicative waste or integrative efficiency. Efficiency can be created when one provider's real estate space can be used to house multiple types of that provider's own equipment, or the provider's same personnel can sell, maintain, or repair more than one of its related

services. Integrative use of personnel not only can help the provider be more efficient, but also can bring to consumers the benefits of "one-stop shopping."

The service-specific approach is very costly because it causes delays in bringing services to market, provides competitors of the BOCs with opportunities to encourage further delay through the gaming of the regulatory process, and forces the BOCs to provide advanced notice of their marketing plans to their competitors. The service-specific approach also ignores the reality of the enhanced services market, and of the telecommunications market in general, in which types of services are converging and changing rapidly as providers continually experiment with new features. A structural separation requirement applicable to some enhanced services would deter the BOCs from improving their integrated enhanced services because an improvement might require structurally separating the entire operation.

AT&T, CompuServe, and Hatfield Associates argue that BOC structural separation should be required for an interim period until there is effective local service competition. After years of structural relief, it would be absurd to require structural separation at the very time that local exchanges across the nation are opening to competition. The competitive threat from other local service providers ensures that BOCs must provide good, non-discriminatory service to ESPs; to do otherwise would simply drive the ESPs to the BOCs' network service competitors. Thus, the emerging local competition means that there is less need than ever for structural separation.

In an attempt to support its position that BOC integration is not beneficial, MCI states that thousands of ESPs provide enhanced services while being separate from the BOCs' network operations. NAA states that with structural separation a BOC affiliate is operating like an independent ESP. These parties are wrong and miss the

point. Third-party ESPs are allowed to integrate all their own businesses in order to take advantage of the efficiencies that integration can produce. These ESPs include VANs, IXC's, and others that have their own networks. MCI and AT&T, for instance, are rapidly entering local markets. By integrating long distance, local, and enhanced services, they intend to offer consumers the "one-stop shopping" that they want.

Hatfield states that it is "clear that there are costs of abandoning structural separation." He and the other opponents of structural relief, however, discuss supposed costs from the loss of protections that are not lost with structural relief, but are provided by the non-structural safeguards that these parties ignore.

Hatfield and other opponents of BOC integration propose an irrational, narrow test for structural relief. Hatfield states that the elimination of structural separation is beneficial only if the BOCs can prove that they would not otherwise enter the market for the service and no one else is willing to offer it. Under this proposed test, the Commission would ignore all the benefits that BOC entry into enhanced service markets on an integrated basis is producing, in the form of lower prices and better service to customers. It is true, for instance, that BOC entry has brought voice mail to new groups of mass market customers. Based on that and on the evidence of the costs of structural separation introduced by the BOCs, the BOCs could pass even Hatfield's overly restrictive test. The expansion of enhanced services markets caused by BOC entry, however, also has created a market for various other competitors, not just the BOCs, as these other competitors strive to meet the prices and service quality of the BOCs. The Commission's cost-benefit analysis should include these other benefits.

The opponents of BOC structural relief argue that ONA is of no value because ESPs purchase relatively few interstate ONA services. This argument is of no merit. Most ESPs use intrastate ONA services because the Commission established a federal access charge exemption which allows ESPs to use lower priced intrastate local exchange and other access services (i.e., intrastate Basic Serving Arrangements or "BSAs") for interstate traffic. The ESPs use intrastate Basic Service Elements ("BSEs") with these intrastate BSAs because the Commission does not allow them to "mix and match." The ESPs' purchase of intrastate services does not undermine ONA. The Commission established ONA based on both intrastate and interstate services, and the Commission approved the BOCs' ONA plans only when the Commission was satisfied that state tariffing methodologies met ONA standards. Thus, the ONA safeguard is effective regardless of whether ESPs purchase intrastate or interstate services.

MCI and GeoNet Limited, L.P. set forth numerous unfounded criticisms of the work being done by the Information Industry Liaison Committee ("IILC") and other national forums and committees concerning the BOCs' offerings of unbundled network services. These organizations are doing a good job in a complex area. Opponents of structural relief make numerous other meritless arguments against ONA. They ignore or distort the amount of unbundling that has occurred as the result of ONA and Expanded Interconnection, the existence of competition for Intelligent Network services, and our proposal related to an appropriate form of mediated access to the Advanced Intelligent Network. Unlike the opponents of structural relief, the national forums and the BOCs cannot ignore technical feasibility, network reliability, and the evolutionary nature of network unbundling.

Opponents of structural relief continue to criticize the Commission's accounting safeguards without saying anything new about them. The accounting safeguards themselves are no longer at issue. In California III, the Ninth Circuit found that the Commission adequately explained why its strengthened accounting rules would protect against cross-subsidy. Although the Commission requested comments on issues beyond those raised by the Court, the Commission did not request comments on the accounting safeguards. In so far as the accounting safeguards are a part of the Commission's cost-benefit analysis for removal of the structural separation requirement, they strongly support removal because they provide a key benefit that structural separation was originally intended to produce -- protection against cross-subsidy.

The Information Industry Association ("IIA"), LDDS Communications, and NAA argue that the Commission should require structural separation because telecommunications legislation currently before Congress, as currently written and if passed, would require structural separation for some enhanced services. The provisions of current bills before Congress reflect many compromises, are likely to change, and may or may not ever become law. The Commission should not, and legally cannot, establish telecommunications policies and requirements based on what Congress might do. The Commission is the expert federal agency on telecommunications and must regulate based on current statutes and the public interest. Based on its review of the record in this proceeding, the Commission should advise Congress that full structural relief is working -- competition is flourishing and consumers and our national economy are obtaining the benefits of new, more efficient, and lower-priced services.

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Bell Operating Company Provision of)
Enhanced Services)
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CC Docket No. 95-20

REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell submit these Reply Comments in response to comments on the Notice of Proposed Rulemaking ("Notice") that was released by the Commission on February 21, 1995, in the above-captioned proceeding.

I. INTRODUCTION

Parties that oppose BOC relief from structural separation requirements have not supported their case with evidence, but with mere speculation, unsupported assertions, irrelevant or immaterial examples, misinterpretations, and distortions. Those parties have utterly failed to establish any basis for BOC structural separation requirements.

The record shows that the inefficiencies and customer confusion resulting from structural separation requirements diminish or remove the BOCs' incentives to participate in enhanced service markets, and thus inhibit competition and reduce the availability to the mass market of new services at lower prices. Conversely, the record shows that non-structural safeguards provide the same protections for consumers and competition as structural safeguards, while allowing the BOCs to efficiently participate in and help expand the market.

Therefore, the Commission has struck the proper balance. It has given the BOCs the incentive to bring enhanced services to millions of mass market customers who previously had not been served. That incentive has been created through the efficiency benefits of integration. At the same time, the Commission has successfully relied on non-structural safeguards, which have protected consumers and competition. With the on-going rapid expansion of both enhanced service and basic network service competition, now is clearly not the time to move backward. By reestablishing full structural relief, the Commission will continue to allow the efficiencies of BOC integration to increase competition and to bring substantial benefits to the mass market of consumers and to our national economy.

II. THE EFFECT OF THE NINTH CIRCUIT'S OPINION WAS TO RETURN THE BOCs TO SERVICE-SPECIFIC STRUCTURAL RELIEF VIA CEI PLANS

The opponents of BOC structural relief misinterpret the Ninth Circuit U.S. Court of Appeal's Opinion. Compuserve, ITAA, MCI, and Prodigy assert that the Court overturned not only Computer III full structural relief via ONA but also Computer III

service-specific relief via CEI plans.¹ This assertion is wrong since the Court's sole objection was the Commission's decision to move away from the CEI Plan requirement and grant full structural relief via ONA, without adequately explaining why "fundamental unbundling" was no longer required.² The Court spoke approvingly of CEI, pointing out: "The CEI plans ensured that enhanced service competitors were provided with interconnections to the BOCs' own networks that were substantially equivalent to the interconnections that the BOCs provided for their own enhanced services."³ Therefore, the Court found fault only with the Commission's cost-benefit analysis for granting full, not service-specific, relief.

Based on their argument that the Ninth Circuit returned the BOCs to Computer II structural separation and that the Commission must start its analysis there, CompuServe, MCI, and NAA assert that the "transition" costs that would be incurred by the BOCs if they were ordered to structurally separate their currently integrated enhanced services cannot be counted in the Commission's analysis of the costs of structural separation.⁴ Since their argument concerning the Ninth Circuit's Opinion is wrong, their argument on these transition costs also is wrong. The Commission is correct that the status quo since the effective date of the Court's Opinion has been service-specific relief, and that the transitional costs that would be caused by the BOCs

¹ Compuserve, p. 13; ITAA, pp. 15-18; MCI, p. 6; Prodigy, p. 2. We and the other BOCs rebutted this assertion in the BOCs' March 6, 1995 Joint Opposition to ITAA's Petition for Reconsideration of the Common Carrier Bureau's order granting in part the BOCs' November 14, 1994 Joint Petition for Waiver of the Computer II Rules.

² See Notice, para. 1.

³ California v. FCC ("California III"), 39 F.3d 919, 927 (1994).

⁴ Compuserve, p. 25; MCI, p. 11; NAA, p. 9.

moving from the current integration of their specifically-approved enhanced services to structural separation of those services must be included in calculating the costs of structural separation.⁵

Even if the Ninth Circuit had returned the BOCs to Computer II structural separation, the transition costs would need to be included in the cost-benefit analysis. Even under a Computer II regime, the BOCs currently would be legally integrating their enhanced services. Opponents of structural relief agree that the Commission should grant waivers to allow integration where warranted.⁶ In the Waiver Order, the Bureau did just that. It stated that "to the extent that the effect of California III might be regarded as returning regulation of BOC enhanced services to the Computer II framework, we believe that a limited waiver of Computer II would be in the public interest...."⁷ The waiver allows integration of these services, and the costs of structurally separating them are a legitimate part of a cost-benefit analysis.

Finally, the result in this proceeding should be the same with or without consideration of the transition costs. In its Notice, the Commission intentionally requested comments on issues beyond those that it was required to review. In order to respond to the Ninth Circuit, the Commission only needed to explain how its abandonment of a fundamental unbundling requirement affected its cost-benefit analysis for granting full structural relief.⁸ Instead, the Commission requested

⁵ See Notice, para. 40.

⁶ Ad Hoc, p. 22; Hatfield, p. 54; ITAA, p. 61.

⁷ Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, DA 95-36, Memorandum Opinion and Order, released January 11, 1995 ("Waiver Order"), para. 29.

⁸ See Notice, para. 2.

comments concerning whether or not, based on a broad cost-benefit analysis, structural separation requirements should be required for some or all BOC enhanced services.⁹

The resulting record shows that, even without the transition costs, the costs of structural separation far outweigh the supposed benefits. Thus, even if the Ninth Circuit had returned the BOCs to Computer II structural separation, the result would be the same -- the Commission should return the BOCs to full structural relief.

III. SERVICE-SPECIFIC STRUCTURAL RELIEF IS NOT NEARLY AS BENEFICIAL TO THE PUBLIC INTEREST AS IS FULL STRUCTURAL RELIEF

A. The Commission Should Not Retain Service-Specific Relief Via CEI Plans

Because the effect of the Ninth Circuit's Opinion was to move the BOCs back to a Computer III service-specific CEI plan regime, the only issue that the Commission was required to address on remand was whether to retain service-specific structural relief via CEI plans or to reestablish full structural relief via ONA plans. Only one party, the Commercial Internet exchange Association ("CIX"), takes the position that the Commission should retain service-specific relief via CEI plans.¹⁰ Although CIX is to be commended for not following the path of most other opponents of full structural relief that unjustifiably seek full structural separation, CIX's position too is without merit.

CIX fails to recognize the lack of benefits from the service-specific CEI plan approach, since ONA provides the same protections as CEI, and more. CIX

⁹ Id.

¹⁰ CIX, pp. 6-10.

"supports strong ONA and service-by-service CEI requirements for all BOCs."¹¹ This is unnecessary, however, because ONA subsumes the CEI requirements.¹² Because of the CEI requirements, CIX is mistaken when it attempts to "demonstrate how the BOCs could use new transport technologies to impose access 'inequality' for independent ESPs."¹³ The CEI requirements of ONA ensure that the BOCs use the same terrified basic services with the same technical parameters as third-party ESPs.

CIX also fails to recognize the substantial costs of the service-specific CEI plan approach. CIX attempts to downplay the costs by stating: "The only burden to the BOC is filing that plan at the Commission, and the time for regulatory approval, which may be expedited."¹⁴ Actually, the service-specific approach is very costly because it causes unnecessary delays in bringing services to market, provides competitors of the BOCs with opportunities to encourage further delay through the gaming of the regulatory process, and forces the BOCs to provide advanced notice of their marketing plans to their competitors. The service-specific approach also ignores the reality of the enhanced services market, and of the telecommunications market in general, in which types of services are converging and changing rapidly as providers continually experiment with new features. For instance, there are no clear definitions of different electronic messaging and videotex on-line database enhanced service applications that can be used to distinguish one from another for marketing or regulatory purposes. All

¹¹ Id. at 5.

¹² See Notice, para. 17.

¹³ CIX, pp. 6-7.

¹⁴ Id. at 8.

of these factors mean that requiring service-specific approvals for one group of competitors, the BOCs, creates inefficient competition, to the detriment of consumers.

B. The Commission Should Reject Other Proposals For Service-Specific Relief

Electronic Publishing Should Not Be Excluded From Relief

The Newspaper Association of America ("NAA") asserts that the Commission should make service-specific determinations concerning which enhanced services would provide efficiency benefits from integration.¹⁵ NAA's position is based on its incorrect assertion that integration of some types of enhanced services, including electronic publishing services, does not produce efficiency benefits. NAA asserts that there are no benefits of integration where the functions involved in providing the enhanced service are distinct from the functions necessary to provide local service.¹⁶ NAA, however, takes too narrow a view of the functions of a service. NAA defines the functions of electronic publishing as "the development and organization of the content of the information to be accessed." That is like defining the functions of voice mail service as creating voice messaging equipment, or the function of local service as creating a network. These functions ensure that the provider has something to provide, but they are not the provision of the service.

¹⁵ NAA, p. 8.

¹⁶ Id.

The provision of electronic publishing and other telecommunications services requires the placement of equipment, the sale of the services, and the maintenance and repair of the services. When one company provides more than one telecommunications service, there can be duplicative waste or integrative efficiency. Efficiency can be created when one provider's real estate space can be used to house multiple types of that provider's own equipment, or the provider's same personnel can sell, maintain, or repair more than one of its related services. Integrative use of personnel not only can help the provider be more efficient, but also can bring to consumers the benefits of "one-stop shopping."

The Commission has long recognized the efficiencies related to BOC integration of voice mail equipment and personnel.¹⁷ These efficiencies are just as relevant to electronic publishing. In fact, voice mail and electronic publishing are not always distinct services. For instance, under our voice mail plan and ONA, we not only have provided the underlying voice mail service, but we also have originated informational messages to our subscribers. These messages had taken the form of daily informational group messages on various subjects and of audiotex services which allow our subscribers to leave messages or to deposit and retrieve information (e.g.,

¹⁷ See Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Phase I, Report and Order, 104 FCC 2d 958, para. 90 (1986) ("CI-III Phase I Report and Order"); Memorandum Opinion and Order on Further Reconsideration, 3 FCC Rcd 1135 (1988), ("CI-III Phase I Further Reconsideration Order"); Phase II, Report and Order, 2 FCC Rcd 3072 (1987) ("CI-III Phase II Report and Order"); Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150 (1988) ("CI-III Phase II Order on Reconsideration"); Phase I and Phase II, Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd 5927 (1990) ("CI-III Phase I Second Further Reconsideration and Phase II Further Reconsideration").

with a drought hotline, subscribers may deposit information concerning their locations and retrieve information concerning water rationing rules for those locations). Content can be part of the voice messaging application. We could not efficiently provide this type of service if we integrated the underlying voice mail service with our basic service, but had to structurally separate our electronic publishing application of the service. A structural separation requirement applicable to some enhanced services would deter the BOCs from improving their integrated enhanced services because an improvement might require structurally separating the entire operation.

Thus, by proposing that some enhanced services, including electronic publishing, be excluded from structural relief, NAA is ignoring the marketplace realities of the telecommunications industry in which convergence and integration of services for one-stop shopping have become essential to meeting customer demands. Integration is being pursued by all types of service providers, not just the BOCs.¹⁸

For instance, NAA describes some of the convergence and integration of services by electronic publishers. NAA points out that its members not only "now offer on-line versions of their newspapers" but also "offer a variety of other enhanced services, including audiotex services, on-line database services available through the Internet and other services, and electronic classified advertising."¹⁹ This convergence and integration of service offerings also is taking place with ESPs that have their own networks, including Value Added Networks ("VANs").²⁰ In order for the BOCs to

¹⁸ See Pacific Bell and Nevada Bell, pp. 18-51.

¹⁹ NAA, p. 1.

²⁰ See Pacific Bell and Nevada Bell, pp. 46-48.

compete and bring benefits to the mass market of consumers, the BOCs must have the same ability to integrate their services.

The Commission should reject NAA's proposal that the BOCs be required to prove the benefits of integration for each enhanced service. Like CIX's CEI plan proposal, NAA's proposal would create substantial regulatory delay and unworkable definitional problems. Accordingly, the Commission should not make structural-relief determinations on a service-specific basis, but should reestablish full structural relief.

Video Programming Should Not Be Excluded From Relief

CCTA makes the same error as NAA when it argues that there are no "legitimate joint economies or efficiencies" that could be produced by BOC integration of video operations and basic telephone service. CCTA states: "The activities of a video programmer -- packaging, tiering, video program production -- are not dependent on, or related to, the functions that a LEC performs as a regulated carrier."²¹ Like NAA, CCTA defines the service too narrowly and leaves out the efficiencies of integrated marketing and sharing of space that are at the heart of Computer III and that are key to bringing services to the mass market.

²¹ CCTA, pp. 17-18.

IV. THE EMERGENCE OF LOCAL SERVICE COMPETITION SUPPORTS FULL STRUCTURAL RELIEF

AT&T, CompuServe, and Hatfield Associates argue that BOC structural separation should be required for an interim period until there is effective local service competition.²² This argument is without any merit for at least two reasons.

First, the BOCs cannot be efficient competitors if they are required now to structurally separate their enhanced services and then later, after an interim period, they are allowed to integrate again. The costs and the disruption to customers and employees caused by moving back and forth make this a totally impractical proposal.²³ Requiring structural separation for an interim period would be tantamount to ordering permanent structural separation.

Second, after years of structural relief, it would be absurd to require structural separation at the very time that local exchanges across the nation are opening to competition.²⁴ The competitive threat from other local service providers ensures that BOCs must provide good, non-discriminatory service to ESPs; to do otherwise would simply drive the ESPs to the BOCs' network service competitors.²⁵

²² AT&T, p. 2; CompuServe, p. 11; Hatfield, pp. 6, 8.

²³ See, e.g., "Benefits And Costs Of Vertical Integration Of Basic And Enhanced Telecommunications Services," Jerry A. Hausman and Timothy J. Tardiff, April 6, 1995, attached to our Comments in this proceeding as Exhibit A. In our Comments, we referred to this document as an affidavit. At that time, it had not yet been signed and notarized. These acts were performed on April 17, 1995, and the signature and notary page is attached hereto as Exhibit A.

²⁴ See Pacific Bell and Nevada Bell, pp. 28-30

²⁵ See id. at 27-51.

Thus, the emerging local exchange competition means that there is less need than ever for structural separation and that there is a decreasing need even for ONA protections.

Opponents of structural relief fail in their attempts to show that market forces do not support that relief. On the one hand, Hatfield asserts that the BOCs have control of the local loop and the first point of switching.²⁶ On the other hand, Hatfield is very careful to avoid saying that the BOCs have any essential facilities and merely speculates that other providers (including cable companies, electrical utilities, and PCS providers) may continue to find it useful to use parts of the BOCs' networks.²⁷ Hatfield's reluctance is understandable. He provides no evidence of BOC control of facilities, but limits his analysis to a brief and speculative review of market share.²⁸ Similarly, ITAA uses an extremely inaccurate figure for BOC local market share as its sole "evidence" that "the BOCs continue to enjoy bottleneck control over the local exchange monopoly."²⁹

ITAA apparently based its figure of "more than 99 percent" for the BOCs' local market share on Hatfield's speculation that the CAPs' share of the total access market is less than one percent.³⁰ Even if that figure were correct, it ignores all the other forms of competition faced by the BOCs.³¹ Similarly, ITAA's "evidence" of a scarcity of bypass is limited to its statement that in 1992 AT&T paid LECs 99.86 percent of the access charges that it incurred. ITAA concludes that AT&T's bypass was less

²⁶ Hatfield, p. 29.

²⁷ Id. at 3.

²⁸ Id., pp. 4, 7.

²⁹ ITAA, p. 37.

³⁰ Id. at 5, n. 6, citing Hatfield.

³¹ See Pacific Bell and Nevada Bell, pp. 27-51.

than one percent.³² This conclusion, however, makes no sense since AT&T's vast bypass achievements have been aimed at avoiding the payment of access charges, not at transferring those payments to other companies.³³

Even if they used reliable numbers, these parties' sole reliance on market share is misplaced. The Commission has recognized that "market share alone is not necessarily a reliable measure of competition, particularly in markets with high supply and demand elasticities."³⁴ The Commission found that "the relative supply capabilities of competitors in the market" may be "more indicative of the level of competition" than are market share data.³⁵ In our comments, we showed that the supply capabilities of competitors entering local exchange markets are vast.³⁶

MCI does not even bother with market share data. It just relies on talismanic incantation of the phrase "local exchange bottleneck."³⁷ This is ironic given MCI's plunge into local service markets and its plan to spend \$20 billion on MCI Metro.³⁸ Since the preparation of our comments, MCI Metro has added 20 local exchanges in Michigan to the areas where it has obtained certificates to provide basic local exchange services.³⁹ In addition, AT&T is seeking authority to provide local exchange service in

³² ITAA, p. 5 at n. 6.

³³ See Pacific Bell and Nevada Bell, pp. 43-46.

³⁴ Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, para. 51 (1991).

³⁵ Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627, para. 51 (1990).

³⁶ See Pacific Bell and Nevada Bell, pp. 27-51.

³⁷ E.g., MCI, pp. 33, 49 and Ex. B. pp. 22, 25.

³⁸ See Pacific Bell and Nevada Bell, pp. 42-43.

³⁹ Telecommunications Reports, April 10, 1995, p. 8.

Illinois and Michigan and has been testing the selling of local phone service in Rochester, N.Y.⁴⁰ Moreover, MCI and AT&T continue to target the local toll market.⁴¹

Cable TV companies similarly rely on unsupported incantations of the words "essential facilities."⁴² This too is unconvincing given the imminent movement of these providers into local service competition.⁴³ Moreover, cable companies do not need to offer exchange service to compete in access. At least one new technology, CableLink, permits end users to access their interexchange carrier through existing cable networks; it even distinguishes free local calls from toll calls, routing the former to the LEC and the latter to the interexchange carrier by cable. Cable companies are rushing to provide network services for ESPs. VIACOM Cable in Castro Valley, California recently sent post cards to subscribers asking for participants in a high-speed test of existing on-line services such as Prodigy, America On-line, and the Internet at no charge through at least September 1, 1995. The trial includes educational and informational services.

CIX's comments exemplify the errors of the opponents of full structural relief. CIX asserts that "as the BOCs face increased competition in the provision of local loop services...the BOCs will undoubtedly exploit their control over the local loop and attempt to offer inferior access to competitive ESPs."⁴⁴ Actually, the increased local loop

⁴⁰ "AT&T Requests Local Services In Two States," The Wall Street Journal, May 4, 1995, p. A3.

⁴¹ "Led by AT&T and MCI Communications Corp., major carriers are lavishing discounts, credits and other incentives on users who agree to quit using local exchange carriers (LEC) for toll calls that fall within local access and transport areas." "Long-haul carriers target short-haul toll market," Network World, April 24, 1995, p. 1.

⁴² CCTA, p. 9; NCTA, p. 8.

⁴³ See Pacific Bell and Nevada Bell, pp. 36-38.

⁴⁴ CIX, p. 4.

competition means that the BOCs have been losing control over the local loop and that any attempt to offer inferior access simply would drive ESPs to the BOCs' network competitors. Therefore, the BOCs' desire for self preservation gives them the strong incentive to provide the best and most reasonably priced network services possible to all customers, including ESPs.

V. THE NON-STRUCTURAL SAFEGUARDS PROTECT COMPETITION AND CONSUMERS

A. Opponents Of Structural Relief Have Not Shown Any Benefits From Structural Separation That Are Not Provided By Non-Structural Safeguards

Hatfield states that it is "clear that there are costs of abandoning structural separation" in favor of integration.⁴⁵ Hatfield and the other opponents of structural relief, however, discuss supposed costs from the loss of protections that are not lost with structural relief, but are provided by non-structural safeguards.

Hatfield and ITAA argue that without structural separation the BOCs can provide their own enhanced service operations with superior installation and maintenance of network services.⁴⁶ They completely ignore, however, the Commission's safeguard under which the BOCs have had to establish and continue to verify non-discriminatory installation, maintenance, and repair.

⁴⁵ Hatfield, p. 32.

⁴⁶ Id. at 33; ITAA, p. 8.